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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 JENNIFER MEDINA,

11 Plaintiff,

12 v.

13 COUNTY OF SAN DIEGO, et al.,

14 Defendants.

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18 ARLENE SUSAN MEDINA and  
19 ROBERT LEO MEDINA,

20 Plaintiffs,

21 v.

22 COUNTY OF SAN DIEGO, et al.,

23 Defendants.

Case No. 08-cv-01252-BAS-RBB

**ORDER GRANTING  
PLAINTIFFS' MOTION TO  
RETAX COSTS**

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27 Plaintiffs bring this Motion to Retax Costs requesting that the Court exercise  
28 its discretion to deny costs to Defendants because this case presented a close or

1 difficult legal question, the issue raised by the case was one of public importance,  
 2 and awarding costs would chill prosecution of future cases such as this. (ECF No.  
 3 175.) Defendants oppose, arguing that this case is not out of the ordinary. (ECF No.  
 4 176.) The Court, in its discretion, finds this is the kind of extraordinary case that  
 5 warrants denying costs and therefore **GRANTS** the Motion to Retax Costs.  
 6 Accordingly, each party must bear their own costs in this case.

## 7 **I. STATEMENT OF FACTS**

8 In the early morning hours of November 16, 2006, Robert Medina died in a  
 9 volley of gunshots fired at his truck by CHP Officers Nava and Fenton and San Diego  
 10 County Sheriff Officers Ritchie and Taft. The gunfire was the culmination of an  
 11 attempted traffic stop, in which Medina failed to yield. Eventually Medina was  
 12 surrounded by over a dozen law enforcement officers and multiple patrol cars, yet  
 13 refused to get out of his truck, despite the fact that his truck had been rammed by a  
 14 patrol car with such force that the squad car's airbag deployed, and both Medina's  
 15 front and rear passenger tires had been shot out and deflated. The four Defendant  
 16 Officers collectively fired more than 36 rounds at the truck. When Medina was then  
 17 pulled from his truck, he was alive, but he died shortly thereafter.

18 This consolidated lawsuit was filed by Medina's widow and parents. In a  
 19 Memorandum Decision, the Court of Appeals found the defendants were entitled to  
 20 qualified immunity because at the time they fired the shots at Medina they "had  
 21 probable cause to believe that . . . he posed a threat of serious harm to the officers."  
 22 (ECF Nos. 166, 167.)

23 Defendants now seek costs from the Plaintiffs in the amount of \$34,441.88—  
 24 \$12,165.24 for Defendant Nava, \$11,552.72 for Defendants Richie, Taft and County  
 25 of San Diego, and \$10,723.92 for Defendant Fenton. Most of these costs stem from  
 26 transcripts of depositions taken of the numerous officers present at the scene.

## 27 **II. STATEMENT OF LAW**

28 Under Federal Rule of Civil Procedure 54(d)(1), costs other than attorney's

1 fees should be allowed to the prevailing party unless a statute, rule, or court order  
2 provides otherwise. Thus, Rule 54(d) states a presumption in favor of awarding costs  
3 to the prevailing party, but vests discretion with the district court to deny these costs.

4 In the ordinary case, costs should be awarded to the prevailing party, so a Court  
5 that exercises its discretion and orders that costs not be awarded must explain why  
6 the case is not ordinary and why “in the circumstances, it would be inappropriate or  
7 inequitable to award costs.” *Assoc. of Mexican-American Educators v. State of*  
8 *California*, 231 F.3d 572, 593 (9th Cir. 2000). Among other reasons, the Court may  
9 consider whether the case involves issues of substantial public importance and  
10 whether the issues in the case are close and difficult. *Id.* The Court may also consider  
11 “the chilling effect of imposing such high costs on future civil rights litigants.” *Id.*  
12 (quoting *Stanley v. University of Southern California*, 178 F.3d 1069, 1079–80 (9th  
13 Cir.), *cert. denied*, 528 U.S. 1022 (1999)). This is not to say that civil rights  
14 defendants do not get the presumption in favor of costs. But the fact that a civil rights  
15 litigant raises an important issue, with an answer that is far from obvious, and the  
16 risk that future litigants may hesitate before raising such issues, are factors that may  
17 appropriately lead the court to refrain from awarding costs.

### 18 **III. ANALYSIS**

19 Despite Defendants arguments to the contrary, a situation in which police  
20 officers shoot and kill an individual is not an ordinary case. It is, one hopes, an  
21 extraordinary case, one which should always lead to consideration of how and if a  
22 different result could have been reached. Furthermore, this case poses an issue of  
23 public importance, far beyond the obvious importance to the litigants. Whenever a  
24 police officer kills an individual, the public has a great interest in understanding the  
25 justification for the shooting and in the reassurance that the reasons have been fully  
26 investigated.

27 Furthermore, this case was not clear cut. There were numerous officers at the  
28 scene, several of whom perceived—in the heat of the moment—the situation

1 differently than others. Medina was not armed. He had not verbally threatened the  
2 officers, and, if anything, the situation could be described as chaotic. It posed a close  
3 and difficult legal issue. In addition, the Plaintiffs in this case, all relatives of the  
4 deceased who were not present at the scene, did not have access to facts allowing  
5 them to assess the credibility of the different accounts of the police officer witnesses.


6 Finally, awarding costs in this type of situation could well chill future cases  
7 like this one, a case that in the long run benefits the public and the officers. It  
8 reassures the public that after investigation, the officers were justified in their actions.

9 **IV. CONCLUSION**

10 Therefore, the Court **GRANTS** Plaintiffs' Motion to Retax Costs (ECF No.  
11 175) and orders that each party bear its own costs in the matter. Judgment is entered  
12 in favor of the Defendants and against the Plaintiffs and the Clerk of Court is ordered  
13 to close the case.

14 **IT IS SO ORDERED.**

15 **DATED: March 13, 2017**

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18 **Hon. Cynthia Bashant**  
19 **United States District Judge**  
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